

GRAY BILL
SENATE BILL NO. 287
INTRODUCED BY BALYEAT

① A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING PROVIDERS OF CERTAIN HEALTH CARE SERVICES FROM REGULATION IN ORDER TO ALLOW FOR CONSUMER FREEDOM AND ACCESS TO THE SERVICES; PROHIBITING CERTAIN ACTS BY INDIVIDUALS PROVIDING UNLICENSED HEALTH CARE SERVICES; PROVIDING PENALTIES AND SANCTIONS; AND REQUIRING DISCLOSURE; AND A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be known as "The Consumer Health Freedom and Access to Health Care Services Act".

NEW SECTION. **Section 2. Legislative findings and purpose.** The legislature finds that a significant number of Montanans receive services related to their personal health from individuals who are not licensed, certified, or registered by this state but who have received training specific to the services they provide. Despite the widespread use of these services, individuals who provide the services may be in technical violation of Montana laws governing licensed health care providers. As a result, an individual who is not licensed, certified, or registered under Title 37 could be subject to fines, penalties, and the restriction of the individual's practice. The legislature finds that these unlicensed health care services may be desirable under certain circumstances, provide consumers with options in health care, and pose no significant risk to public health, safety, or welfare. It is the purpose of [sections 1 through 6] to allow an individual who is not licensed, certified, or registered under Title 37 to provide certain health care services without threat of sanction by the state if the individual is in compliance with the provisions of [sections 1 through 6].

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:

~~— (1) (a) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic~~

colleges.

~~(b) The term does not include surgery or the prescription or use of drugs.~~

(2)(1) "Controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

(3)(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(4)(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the **diagnosis, cure**, mitigation, treatment, or prevention of disease in humans; or

(b) to affect the structure or any function of the human body.

(5)(4) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription.

(6)(5) "Unlicensed health care services" means health care and healing therapies and methods that are not prohibited by [section 4] and that are provided by an individual who is not licensed, certified, or registered under Title 37.

NEW SECTION. Section 4. Prohibited acts. (1) Notwithstanding any other provision of law, an individual who provides unlicensed health care services is not in violation of any provisions of Title 37 involving practicing without a license unless the person:

(4)(A) performs surgery or any other procedure that punctures the skin, except for a fingerprick drawing of blood for screening purposes;

(2)(B) prescribes or administers x-ray radiation;

(3)(C) prescribes, administers, or dispenses a prescription drug, a device that requires a prescription for use, or a controlled substance;

(D) PROVIDES A CONVENTIONAL MEDICAL DISEASE DIAGNOSIS;

(E) DIRECTS OR INSTRUCTS A PERSON TO DISCONTINUE MEDICAL CARE OR A MEDICAL TREATMENT PRESCRIBED BY A LICENSED HEALTH CARE PROVIDER;

(4)(F) performs a ~~chiropractic adjustment that uses a high-velocity, low-amplitude thrusting force~~ THRUST TO A JOINT;

~~(5) diagnoses and treats a health condition of a client in a manner that causes imminent and significant risk of discernable and substantial physical or mental injury when the individual, in the exercise of reasonable care, should have known the diagnosis or treatment could result in the risk of discernable and substantial physical or mental injury; or~~

(G) KNOWINGLY **AND OR** PURPOSELY DIAGNOSES AND TREATS A PHYSICAL OR MENTAL HEALTH CONDITION **OF A CLIENT UNDER CIRCUMSTANCES OR CONDITIONS THAT CAUSE OR CREATE AN**

~~IMMINENT OR DISCERNIBLE RISK OF SIGNIFICANT BODILY HARM,
SERIOUS PHYSICAL OR MENTAL ILLNESS, OR DEATH; OR~~

(H) ENGAGES IN AN ACTIVITY FOR WHICH THE PERSON'S
LICENSE HAS BEEN SUSPENDED OR WAS REVOKED; OR

(6)(H)(I) holds out, states, indicates, advertises, or implies that the
individual is licensed, certified, or registered under Title 37.

~~(2) FOR THE PURPOSES OF SUBSECTION (1)(D), THE
FOLLOWING ACTIVITIES ARE NOT A DIAGNOSIS:~~

~~(A) THE USE OF MEDICAL TERMINOLOGY OR COMMON WORDS
TO ADVISE A CLIENT TO SEE A LICENSED, CERTIFIED, OR
REGISTERED HEALTH CARE PROVIDER IN ORDER TO RULE OUT A
DIAGNOSABLE CONDITION;~~

~~(B) A STATEMENT BY AN INDIVIDUAL THAT SYMPTOMS MAY BE
INDICATIVE OF OR CONSISTENT WITH A SPECIFIC MEDICAL
CONDITION; OR~~

~~(C) A STATEMENT BY AN INDIVIDUAL THAT A CLIENT HAS A
PROBABILITY OF SIGNIFICANTLY LESS THAN 100% OF HAVING A
SPECIFIC MEDICAL CONDITION.~~

~~(3) THE FACT THAT AN INDIVIDUAL IS PROVIDING UNLICENSED
HEALTH CARE SERVICES IS NOT EVIDENCE OF AN IMMINENT OR
DISCERNIBLE RISK OF HARM FOR THE PURPOSES OF SUBSECTION
(1)(G).~~

NEW SECTION. Section 5. Disclosure AND FILING OF
DISCLOSURE required -- acknowledgment by client -- EXCEPTION.

(1) (a) THE DEPARTMENT SHALL DEVELOP A DISCLOSURE
STATEMENT FORM DESCRIBED IN SUBSECTION 2(A) TO BE
PROVIDED TO CLIENTS BY INDIVIDUALS SUBJECT TO THE
PROVISIONS OF [SECTIONS 1 THROUGH 6]. THE DEPARTMENT
SHALL REQUIRE INDIVIDUALS SUBJECT TO THE PROVISIONS OF
[SECTIONS 1 THROUGH 6] WHO ARE PROVIDING SERVICES TO
CLIENTS TO FILE A COMPLETED DISCLOSURE STATEMENT FORM
WITH THE DEPARTMENT.

(b) AN INDIVIDUAL FILING A DISCLOSURE STATEMENT FORM WITH
THE DEPARTMENT SHALL FILE AN UPDATED FORM ONCE A YEAR
OR UPON RECEIVING AN UPDATED DISCLOSURE STATEMENT
FORM FROM THE DEPARTMENT.

(2) Before an individual provides unlicensed health care services to a client
under [sections 1 through 6] for the first time, the individual shall:

(a) disclose PROVIDE A WRITTEN DISCLOSURE STATEMENT
FORM to the client or the client's legal guardian in a plainly worded written

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statement **THAT PROVIDES** the following information:

- (i) the individual's name, business address, and telephone number;
- (ii) the fact that the individual is not licensed, certified, or registered by the state of Montana as a health care provider;
- (iii) the nature of the unlicensed health care services to be provided; and
- (iv) the degrees, training, experience, credentials, or other qualifications, ~~if any~~, that the individual has obtained with regard to the unlicensed health care services being provided; AND

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(V) INFORMATION, INCLUDING CONTACT INFORMATION, ON HOW A CLINT MAY FILE A COMPLAINT WITH THE DEPARTMENT.

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(b) obtain ~~written~~ A SIGNED acknowledgment from the client that the client has been provided with the **information DISCLOSURE STATEMENT FORM** required under this subsection (1);

(c) provide the client with a copy of the ~~written~~ SIGNED acknowledgment; and

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(d) retain the ~~written~~ SIGNED acknowledgment as part of the client's record for at least 2 years ^{DISCLOSURE} AFTER THE LAST CLIENT CONTACT.

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(2) THE STATEMENT **FORM** REQUIRED UNDER SUBSECTION ~~(1)~~ **THIS SECTION** MUST INCLUDE THE FOLLOWING LANGUAGE: "THE STATE OF MONTANA HAS NOT ADOPTED ANY EDUCATIONAL OR TRAINING STANDARDS FOR INDIVIDUALS WHO PROVIDE UNLICENSED HEALTH CARE SERVICES. THIS DISCLOSURE IS FOR INFORMATIONAL PURPOSES ONLY. UNDER MONTANA LAW, AN INDIVIDUAL WHO PROVIDES UNLICENSED HEALTH CARE SERVICES MAY NOT PROVIDE A MEDICAL DIAGNOSIS OR INSTRUCT OR DIRECT A PERSON TO DISCONTINUE A MEDICALLY PRESCRIBED TREATMENT. A CLIENT MAY SEEK AT ANY TIME A MEDICAL DIAGNOSIS FROM A LICENSED HEALTH CARE PROVIDER QUALIFIED TO MAKE A DIAGNOSIS.

(2)(3) The individual shall make reasonable accommodations to provide the information required under subsection (1) to a client or legal guardian who cannot read, has impaired communications skills, or does not read or speak the language of the provider.

(3)(4) If the information required for disclosure under this section has changed since it was originally provided to a client or legal guardian, the individual shall provide revised information as required in this section if a client obtains additional unlicensed health care services after the information has changed.

(5) PRACTITIONERS WHO ARE RECOGNIZED WITHIN THEIR COMMUNITY AS TRADITIONAL AND CULTURAL HEALERS ARE EXEMPT FROM THE DISCLOSURE AND ACKNOWLEDGMENT

REQUIREMENTS OF THIS SECTION.

NEW SECTION. Section 6. Penalties -- sanctions. (1) An individual who violates any provision of [sections 1 through 6] may be subject to the provisions and penalties of 37-1-317 and 37-1-318. An injunction or penalty imposed under this subsection applies only to the act or practice that constituted a violation.

(2) Before an individual is sanctioned for a violation of [section 5], the department shall notify the individual of the complaint and attempt to resolve it through education or mediation.

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1, apply to [sections 1 through 6].

NEW SECTION. SECTION 8. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JANUARY 1, 2010.

(15)

Amendments to Senate Bill No. 287
3rd Reading Copy

Requested by Representative Michele Reinhart

For the House Business and Labor Committee

Prepared by Bartley Campbell
March 25, 2009 (8:05am)

1. Title, line 9.

Following: "SANCTIONS;"

Strike: "AND"

Following: "DISCLOSURE"

Insert: "; AND PROVIDING A DELAYED EFFECTIVE DATE"

2. Page 2, line 8.

Following: "in the"

Strike: "diagnosis, cure,"

3. Page 2, line 16.

Strike: "(1)"

4. Page 2, line 19.

Strike: "(A)"

Insert: "(1)"

Renumber: subsequent subsections

5. Page 3, line 3.

Following: "KNOWINGLY"

Strike: "AND"

Insert: "or"

6. Page 3, line 3 through line 5.

Strike: "OF A" on line 3 through "DEATH" on line 5

7. Page 3, line 9 through line 17.

Strike: subsections (2) and (3) in their entirety

8. Page 3, line 19.

Following: "Disclosure"

Insert: "and filing of disclosure"

Following: "(1)"

Insert: "(a) The department shall develop a disclosure statement form described in subsection (2)(a) to be provided to clients by individuals subject to the provisions of [sections 1 through 6]. The department shall require individuals subject to the provisions of [sections 1 through 6] who are providing services to clients to file a completed disclosure statement form with the department."

(b) An individual filing a disclosure statement form with the department shall file an updated form once a year or upon receiving an updated disclosure statement form from the department.

(2) "

Renumber: subsequent subsections

9. Page 3, line 22.

Following: "(a) "

Strike: "disclose"

Insert: "provide a written disclosure statement form"

Strike: "in a plainly worded written statement"

Insert: "that provides"

10. Page 3, line 27.

Strike: "and"

11. Page 3, line 29.

Following: " ; "

Insert: "and"

(v) information, including contact information, on how a client may file a complaint with the department; "

12. Page 4, line 1.

Strike: "information"

Insert: "disclosure statement form"

Strike: "subsection (1) "

Insert: "section"

13. Page 4, line 5.

Following: the first "THE"

Insert: "disclosure"

Following: "STATEMENT"

Insert: "form"

Strike: "SUBSECTION (1)"

Insert: "this section"

14. Page 4, line 12.

Strike: "subsection (1) "

Insert: "this section"

15. Page 4, following line 27.

Insert: "NEW SECTION. Section 8. Effective date. [This act] is effective January 1, 2010."

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